

January 26, 1999

Ms. Emily Helm
Director of Legal Services
Texas Youth Commission
P.O. Box 4260
Austin, Texas 78765

OR99-0238



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Dear Ms. Helm:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 122116.

The Texas Youth Commission (the "commission") received a request for investigation notes and an internal report on an investigation of alleged sexual harassment. You do not ask about the required public release of the requested investigation notes. You assert that the report is excepted from disclosure pursuant to the common-law right of privacy under section 552.101 of the Government Code. We have considered your arguments and reviewed the information submitted.

The submitted report contains information excepted from public disclosure by privacy under section 552.101 of the Government Code. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. Although information relating to an internal investigation of sexual harassment claims involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986).

In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and a summary of the board of inquiry that conducted the investigation. *Id.* The court ordered the release of the

affidavit of the person under investigation and the summary of the investigation, stating that the public's interest was sufficiently served by the disclosure of these documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

After a review of the report, we conclude that you must release the report after redacting the victims' and witnesses' identifying information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

David Van Brunt Price
David Van Brunt Price
Assistant Attorney General
Open Records Division

DVP\nc

Ref: ID# 122116

Enclosures: Submitted documents

cc: Mr. Devin Wilson
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(w/o enclosures)